

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 28, 2009

STATE OF TENNESSEE v. LORETTA LYNN MUNSON

Appeal from the Criminal Court for Sullivan County
Nos. S49,384 and S51,980 Robert H. Montgomery, Jr., Judge

No. E2008-01525-CCA-R3-CD - Filed March 19, 2009

The defendant, Loretta Lynn Munson, appeals the revocation of her community corrections sentence, alleging that the trial court erred by ordering service of the original sentence. Discerning no error, we affirm. The case must be remanded to the trial court, however, for the entry of an order revoking the defendant's probation in case number S51,980.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed; Remanded

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

William A. Kennedy, Assistant District Public Defender, for the appellant, Loretta Lynn Munson.

Robert E. Cooper, Jr., Attorney General and Reporter; Matthew Bryant Haskell, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and J. Lewis Combs, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In June 2006, the defendant entered pleas of guilty in the Sullivan County Criminal Court to one count of theft of property valued at more than \$1,000 but less than \$10,000 in case number S49,384 and failure to appear in case number S51,980. Pursuant to a plea agreement entered into by the parties, the trial court imposed a sentence of two years for failure to appear to be served as six months' incarceration followed by supervised probation. For the theft conviction, the trial court imposed a sentence of 10 years to be served entirely on community corrections. The trial court ordered partially consecutive service of the sentences, requiring that the defendant's 10-year community corrections sentence commence immediately upon her release from the six months' incarceration to be served as part of the two-year sentence. Thus, in December 2006, the defendant began serving both the 10-year community corrections sentence and the probation portion of the two-year sentence.

On May 6, 2008, the defendant's probation officer filed a probation violation warrant in case number S51,980, which bears a signature date of May 16, 2007, alleging that the defendant had violated the terms of her probation by failing to report and by absconding from the jurisdiction. The community corrections violation filed on May 6, 2008, in case number S49,384 bears a signature date of March 12, 2007, and alleges that the defendant violated the terms of her community corrections sentence by absconding.

At the June 26, 2008 revocation hearing, the defendant admitted violating the terms of her sentence by failing to report as required, by using illegal drugs and alcohol, and by changing residences without informing her probation officer. The defendant conceded that she "absconded" from her sentence for "about a year," and she blamed her failure to comply on her abuse of drugs and alcohol. She asked the trial court to allow her to enter a drug and alcohol rehabilitation program, explaining, "I'm ready to change. . . . Before I wasn't committed and now I am."

At the conclusion of the hearing, the trial court concluded, "[B]ecause you've gone so long and there were so many things that you could have done and yet, you know, made the decision that you didn't want to for whatever reason, that it's appropriate for me to place you back on community corrections." The trial court ordered the defendant "to serve that 12[-]year sentence; 10 years as a Range III persistent and then two years as a Range I in the Tennessee Department of Corrections."

On July 10, 2008, the trial court entered a written order revoking the defendant's community corrections sentence in case number S49,384 and ordering that the original, 10-year sentence imposed in that case be served in incarceration. The order made no mention of the disposition of case number S51,980.

In this appeal, the defendant contends that the trial court erred by ordering incarcerative service of the original sentence because she "showed a clear desire to get drug and alcohol treatment." The State, of course, asserts that the trial court did not abuse its discretion. We agree with the State.

A trial court may revoke a sentence of probation upon a finding by a preponderance of the evidence that the defendant has violated the conditions of her release. T.C.A. § 40-35-311(e) (2006); *Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). A revocation will be upheld absent a showing that the trial court abused its discretion. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). In order to establish that the trial court has abused its discretion, the defendant must show that there is no substantial evidence to support the determination that she violated her probation. *Id.* (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). Relief will be granted only when "the trial court's logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved." *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)). Upon finding a violation, the trial court may "revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered." T.C.A. § 40-35-311(e). Furthermore, when probation is revoked, "the original judgment so rendered by the trial judge shall be in full force and effect from the date

of the revocation of the suspension.” *Id.* § 40-35-310. The trial judge retains the discretionary authority to order the defendant to serve the original sentence. *See State v. Duke*, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

Here, the defendant violated the terms of her probation by changing her residence without informing her probation officer and failing to report as required. The defendant’s newfound willingness to enter drug and alcohol treatment does not alter the fact that she failed to comply with the terms of her sentence. The trial court did not abuse its discretion by ordering the defendant to serve her sentences in incarceration.

Finally, we note that although the transcript indicates that the trial court intended to revoke the defendant’s probation in case number S51,980 and her community corrections placement in case number S49,384, the trial court’s order references only the 10-year community corrections sentence in case number S49,384. Generally, when there is a conflict between the transcript and the judgment, the transcript controls. *See, e.g., State v. Moore*, 814 S.W.2d 381, 383 (Tenn. Crim. App. 1991). In consequence, the case must be remanded for the entry of an order revoking the defendant’s probation in case number S51,980.

Accordingly, the judgment of the trial court is affirmed and remanded.

JAMES CURWOOD WITT, JR., JUDGE